



**Tribunals Service**  
Information Tribunal

**Information Tribunal Appeal Number: EA/2007/0024**  
**Information Commissioner's Ref: FS50125496**

**Heard on the papers**  
**at Procession House, London, EC4**  
**on 16<sup>th</sup> November 2007**

**Decision Promulgated**

**18<sup>th</sup> December 2007**

**BEFORE**

**CHAIRMAN**

**Mr H Forrest**

**and**

**LAY MEMBERS**

**Mr G Jones**

**Ms J Blake**

**Between**

**Mr MJ Hossack**

**Appellant**

**and**

**INFORMATION COMMISSIONER**

**Respondent**

**and**

**The Department for Work and Pensions**

**Additional Party**

**Decision**

The Tribunal upholds the decision notice dated 13 March 2007 and dismisses the appeal.

## **Reasons for Decision**

### **Introduction**

1. On the 4 January 2002 a member of staff from Jobcentre Plus in Dudley (an executive agency of the Department for Work and Pensions (DWP)) was responding to a question about benefits received by Mrs Hossack. The question was from solicitors handling a personal injury claim involving Mrs Hossack. In the course of the call, the member of staff disclosed that Mr Hossack was receiving benefits. That disclosure was unauthorised and a breach of the Data Protection Act.
2. Mr Hossack has been campaigning about that breach ever since. The Department have investigated the breach, a number of times, have admitted it, accepted responsibility for it, apologised for it, and paid compensation to Mr Hossack for it. During the course of his campaign, Mr Hossack has twice had the breach investigated by the Parliamentary Commissioner for Public Administration (the Ombudsman), whose recommendations the DWP have accepted and acted upon.
3. Mr Hossack remains dissatisfied. He has engaged three firms of solicitors at various times to act on his behalf. He has taken counsel's opinion. He has repeatedly threatened legal action, though none has resulted. He has campaigned publicly, naming individual members of DWP staff, accusing them of a variety of criminal acts including corruption and fraud. He has leafleted locally setting out his allegations; he has towed a trailer with posters advertising his allegations around the town. More recently, he has set up a website to publicise his allegations.

### **The request for information**

4. Over the years, Mr Hossack has made many requests for information to the Department, which have been answered to a greater or lesser extent during the various inquiries and voluminous correspondence generated by his campaign. One particular issue that has concerned Mr Hossack is the identity of the employee who made the disclosure (though in more recent correspondence to the Tribunal, Mr Hossack asserts that he now knows the name, and in any event is not – and never has been - interested in the identity of the individual.)
5. One particular letter from Mr Hossack, of 12 March 2006 made specific reference to the Freedom of Information Act (FOIA) and requested "copies of the XXXX enquiry and YYYY enquiry information". These are two employees of the DWP who had investigated Mr Hossack's complaint in its early stages.
6. That request was refused on 11 May 2006 on the grounds that it was vexatious and could therefore be refused within section 14 of FOIA.

### **The complaint to the Information Commissioner**

7. Mr Hossack complained about that refusal to the Information Commissioner (IC). As part of its response to the Commissioner's investigation, the DWP prepared a

lengthy account of the history of the various complaints and correspondence, setting out their analysis of why the current request should be treated as vexatious.

8. The Commissioner's investigation was understandably protracted. The Decision Notice, issued on 13 March 2007, found that "the request was correctly refused as vexatious", though it noted that the DWP's response had been given outside the 20 day time limit set by the Act. No remedial action was required.

#### The appeal to the Tribunal

9. Mr Hossack appealed against the Decision Notice on 27 March 2007, on the ground that the Commissioner was wrong to describe his request as vexatious. The DWP was joined as a party and directions were given.

#### The questions for the Tribunal

10. The legal framework is simple. Section 14 of FOIA states:

*(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.*

11. The Act does not define vexatious further. The Information Commissioner has published Awareness Guidance notes, no 22 of which deals with vexatious and repeated requests. We found that a helpful framework, though it is not of course binding on us. The DWP referred us to a number of decisions dealing with vexatious in different statutory contexts, including costs awards and vexatious litigants. We found these interesting but not directly helpful. We accept the DWP's point that the consequences of a finding that a request for information is vexatious are much less serious than a finding of vexatious conduct in these other contexts, and therefore the threshold for a request to be found vexatious need not be set too high. Our context is different; and, as the IC points out in his Guidance, it is the character of the request which must be considered, not the party.
12. That raises the question of how far the request must be considered in its own terms, and how far it can be considered in context. On its own, there is nothing in the wording or nature of the request to suggest it could be vexatious. But there is no reason to restrict consideration to what appears on the face of the request, and it would be artificial to do so. Clearly, context and history are important. To decide whether a request is vexatious must include, for example, the effect on the recipient, and may vary depending on who the recipient is, and when the request is made.
13. We found the previous decision of the Information Tribunal in *Ahilathirunayagam v Information Commissioner and London Metropolitan University*, EA/2006/0070 helpful. They considered a number of factors in deciding that that request was vexatious :
  - i. There is no statutory definition for the term vexatious and its normal use is to describe activity that is likely to cause distress or irritation, literally to vex a person to whom it is directed.

- ii. The fact that several of the questions purported to seek information which the Appellant clearly already possessed and the detailed content of which had previously been debated with the University.
- iii. The tendentious language adopted in several of the questions, demonstrating that the Appellant's purpose was to argue and even harangue the University and certain of its employees and not really to obtain information that he did not already possess.
- iv. The background history between the Appellant and the University ... and the fact that the request, viewed as a whole, appeared to us to be intended simply to reopen issues which had been disputed several times before.

Several of these factors are present in the current appeal. We would add to the first factor that for the request to be vexatious there must be no proper or justified cause for it. A parking ticket may be likely to cause distress or irritation and may vex the motorist who receives it, but, if properly issued, should not be described as vexatious.

### Evidence

14. This appeal was decided without an oral hearing. The parties presented their evidence and submissions to us in writing. We do not propose to set out the evidence in any detail, but having considered all of it, we make the following findings.
15. Mr Hossack has already in one way or another during his lengthy correspondence and the previous enquiries received the bulk, if not all, of the information he now requests. We noted above for example, his own statement that he now knows the name of the employee who made the original wrongful disclosure.
16. The Department does not know with certainty who made that disclosure, but on the evidence available, it is clear that the identity of the individual has been known, on a balance of probability, since soon after the first enquiries were made.
17. The Department's initial responses to Mr Hossack were misleading. They gave the impression that the employee involved could not be identified. Moreover, they implied that full enquiries had been made, when the third party, the firm of solicitors to whom the disclosure had been made, had not been contacted.
18. Those matters were investigated and ruled on by the Ombudsman. It was that second report, in February 2005, that led to the Department's second compensation payment, making a total of £150. We endorse the Ombudsman's observation that "Jobcentre Plus [the Department] could have handled your complaint better".
19. We quote one or two examples of Mr Hossack's correspondence, almost at random, to give an indication of Mr Hossack's approach: from a letter to the Director of Jobcentre Plus, 1 April 2004: "I have no intention at all of terminating any communication with the Dudley Job Centre plus office, and intend to make further

factual comments in writing and verbal form. This to include leaflets given out with the corrupt officers' names upon them outside Job Centre Plus on random days." From a letter of 12 December 2005 "sent to the list of government bodies who have become involved in this saga.": "My intension [sic] will also be to bring the complaint back to local levels by naming and shaming the corrupt fraudulent officers in my local DWP department being [two names are given] and the corrupt data protection officer ...".

### Consideration and Conclusion

20. Mr Hossack has been unwilling to let the matter rest, after the second Ombudsman's report, despite no new matters of any significance having come to light since. He has relentlessly pursued different members of the DWP staff with correspondence, scattering his allegations of corruption broadly, and publicising them vigorously both in the immediate locality and, through his website, to the world. In his submission to us, Mr Hossack explained his understanding of fraud: "to give or provide information that is untrue". In this view of the world, every error is fraudulent; and it is noticeable that Mr Hossack does not attribute a motive, let alone any question of personal or financial gain, to the employee who made the original disclosure, or those who subsequently investigated it.
21. A recurrent feature of the correspondence are threats of imminent legal action from Mr Hossack, often directed to individuals, and couched in formal legal terms. Mr Hossack explained to us that he meant nothing by this: "This I believe to be a mere tool to get a response and that the threat is nothing more than subliminal". Another recurrent feature is the repetition of increasing statements of financial loss which Mr Hossack attributes to the Department's actions in some way, rather than to his own needlessly protracted campaign. At times Mr Hossack states that he intends to sue to recover this money; at others, he denies any question of financial interest.
22. Just as, over the years, Mr Hossack's financial claims have mounted, so has his deluded sense of the importance of the issues at stake. For example, in a letter of 12 October 2006 to the IC's office: "I am afraid the matter has gone beyond the recognisable simple mistake that was made .... The matter concerned has now become a matter of breach of convention of human rights Act under loss of liberty as it is quite clear from information gained that the conspiracy between the Ombudsman, DWP and Job Centre Plus continues with unforgivable deceit, lies, fraud and corruption." In our view, far from a campaigner for truth and justice on behalf of the public, as Mr Hossack portrays himself, he is more correctly described as pursuing an unreasonable obsession.
23. Against that background, is Mr Hossack's request for the information contained in the two internal investigations vexatious? Applying the second, third and fourth factors considered by the Tribunal in the case of Ahilathirunayagam:
  - (ii) Previous possession of the information: Mr Hossack already had the substance of the 2 reports, and has debated their detailed content with the department.
  - (iii) Tendentious language: Mr Hossack's request is expressed neutrally, but the language of many of his past communications has been tendentious,

aggressive, threatening and abusive. His purpose has been to harangue the department and its employees, not to seek information he did not already possess.

(iv) Reopening issues: Mr Hossack endlessly wishes to debate the circumstances of that original disclosure, each time magnifying its importance and effects.

24. If we hesitate at all in describing the request as vexatious, it is only because when considering the first factor, we have added the qualification that the distress caused must be unjustified:

(i) activity that is likely to cause, without justification or proper cause, distress or irritation: there is no doubt that Mr Hossack's request caused distress and irritation, but in the early stages at least, Mr Hossack's campaign was fuelled by the Department's initial misleading replies. In Mr Hossack's view, this provides a full justification for his subsequent and current allegation of a corrupt cover up.

25. We reject that view. Whatever cause or justification Mr Hossack may have had for his campaign initially, cannot begin to justify pursuing it to the lengths he has now gone to. To continue the campaign beyond the Ombudsman's second report, when his complaint had been exhaustively and externally investigated, and once the Department had accepted the errors, apologised for them and paid compensation, is completely unjustified and disproportionate.

26. We say that not just because of the wounding and intemperate language which Mr Hossack uses on occasion, or the volume of his correspondence, but because the original breach of the Data Protection Act has led to no discernible detrimental effects for Mr Hossack. His privacy was certainly infringed, but he has suffered no material loss, and has been appropriately compensated for the invasion of privacy; and to the extent that the breach has been publicised, that is entirely his own doing. (We have no jurisdiction over matters of compensation, but we are not surprised that the Ombudsman thought the relatively small sum of £150 was appropriate.)

27. Seen in context, we have no hesitation in declaring Mr Hossack's request, in January 2007, vexatious. The Information Commissioner was correct in reaching that conclusion in the decision notice, which we uphold.

### Costs

28. During the course of the appeal, Mr Hossack applied for costs against the DWP and the IC; and the DWP applied against Mr Hossack. The IC seeks no award. The Tribunal's powers to award costs are set out in Rule 29 of the Tribunal's Enforcement Appeals rules 2005:

(1) In any appeal before the Tribunal, ... , the Tribunal may make an order awarding costs –

(a) Against the appellant and in favour of the Commissioner where it considers the appeal was manifestly unreasonable;

(b) Against the Commissioner and in favour of the appellant where it considers that the disputed decision was manifestly unreasonable;

(c) Where it considers that a party has been responsible for frivolous, vexatious, improper or unreasonable action, or for any failure to comply with a direction or any delay which with due diligence could have been avoided, against that party and in favour of any other.

29. We take (c), the only appropriate provision for an award of costs between the appellant and the third party, to be restricted to action during these appeal proceedings. We have no jurisdiction to award costs because of a party's previous frivolous, vexatious, improper or unreasonable action. Our finding that Mr Hossack's request was vexatious has no bearing on consideration of costs.
30. Mr Hossack's claim for costs against the IC is groundless and is dismissed without further consideration. His claim against the DWP (for £200000 incurred since 2001) is based on various grounds, most of them outside our jurisdiction. In a minor respect, the DWP failed to comply with Directions from the Tribunal for exchange of documents and submissions missing a deadline by some days. Even if we were satisfied that with due diligence this could have been avoided (and we are not so satisfied, having regard to the explanation provided), we would not have awarded costs for a minor breach which has had no bearing on the overall fairness of the process and has not affected the other parties' ability to present their case. Mr Hossack's claim for costs against the DWP is dismissed.
31. The DWP claim their solicitors' costs in conducting the appeal, some £11,680, excluding counsel's costs. The DWP argues that because Mr Hossack's request was vexatious, "it follows that this appeal is also vexatious, improper or unreasonable". As set out above, we reject the suggestion that the character of the request determines the character of the appeal. It is easy to see situations where the Tribunal may find a request vexatious, but does so only on balance, after anxious consideration. In such a case, an appeal could not be said to be vexatious or unreasonable. This is not such a case; given the history and context, the request is clearly vexatious; "the Commissioner's decision was manifestly correct" as the DWP argue.
32. That finding might ground an award of costs in favour of the Commissioner under Rule 29(1)(a) on the basis that the appeal was manifestly unreasonable, but the Commissioner seeks no such award. It is unclear whether Rule 29(3) allows us to award the costs of an appeal to a third party on the grounds that the appeal itself was manifestly unreasonable, as opposed to action within the appeal. However, even if we decided that point in the DWP's favour, a costs award would be discretionary, not automatic ("the tribunal *may* make an order awarding costs").
33. In exercising our discretion, we take into account that in appeals to the Tribunal costs are the exception, not the norm. It is important that the public should not be deterred by the threat of costs from approaching the Tribunal. Secondly, FOIA is new law. The definition of a vexatious request is still unsettled: we have not, for example, adopted the IC's definition in his Guidance Note, though we reach the same conclusion. We have found the request clearly vexatious, but only after considering context and history. On its face, it is a reasonable request.

34. Thirdly, considering the facts of this particular case, there is our finding that the DWP's initial replies to Mr Hossack were misleading. We do not say that that justifies his subsequent campaign, but it does mean that the DWP are not the entirely innocent victims of a misguided appeal. At least initially, they contributed to the force of Mr Hossack's campaign.
35. Fourthly, there is nothing in Mr Hossack's conduct of the appeal proceedings which would give rise to any award, at least until the later stages. His submissions repeat his misguided allegations of corruption against the DWP, but that is part and parcel of his case.
36. However, in the final stages of the appeal, he makes an unpleasant and personal attack on the conduct and integrity of the solicitor conducting the case for the DWP: for example, in the "Conclusion" submitted on 4 November 2007. Allowing for the stress of litigation, and the irritation no doubt caused by the DWP's missed deadlines, this is an improper way to conduct the action.
37. Even so, considering the first four factors above, we have decided against a costs award. However, Mr Hossack should be aware that he has escaped an award on this occasion by the narrowest of margins, and he may not find another Tribunal, should he pursue a comparable appeal again, as accommodating.
38. Our decision is unanimous.

Signed

Humphrey Forrest

Deputy Chairman

Date 18<sup>th</sup> December 2007